

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
SPRINT PCS, LLC)
)
PETITION FOR RECONSIDERATION AND)
CLARIFICATION OF THE NATIONWIDE)
PROGRAMMATIC AGREEMENT FOR)
COLLOCATION OF WIRELESS)
ANTENNAS)
)

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: March 1, 2005

Released: March 2, 2005

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On May 2, 2001, Sprint PCS, LLC (“Sprint”) filed a Petition for Reconsideration and Clarification (“Petition”)¹ of the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation Agreement”), signed by the Wireless Telecommunications Bureau (“Bureau”) of the Federal Communications Commission (“Commission”), the Advisory Council on Historic Preservation (“ACHP”), and the National Conference of State Historic Preservation Officers (“NCSHPO”) on March 16, 2001.² The Collocation Agreement exempts collocated antennas from the Section 106 review process of the National Historic Preservation Act (“NHPA”), with certain exceptions. In this Order, we deny Sprint’s Petition.

II. DISCUSSION

2. Under Section 106 of the NHPA,³ federal agencies are required to take into account the effects of federal undertakings on historic properties. The statute defines “undertaking” to mean “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, *including ... those requiring a Federal permit[,] license, or approval*” and entrusts ACHP with promulgating procedures to govern the Section 106 process.⁴ The ACHP rules permit ACHP and the

¹ See Petition for Reconsideration, filed by Sprint PCS, LLC, dated May 2, 2001; *See also* Letter from John Scott, III, Esq., Verizon Wireless and Luisa Lancetti, Sprint PCS, LLC to Thomas Sugrue, Esq., Chief, Wireless Telecommunications Bureau, dated June 7, 2002.

² See *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, 16 FCC Rcd 5574, 5575-5581 (Wireless Tel. Bur. 2001) (Collocation Agreement).

³ See 16 U.S.C. § 470f.

⁴ See 16 U.S.C. § 470w(7)(C) (emphasis added).

agency, in consultation with others, to negotiate a specially tailored programmatic agreement to govern implementation of the Section 106 process for a particular federal program instead of the procedures prescribed by ACHP's rules.⁵

3. Applicants' responsibilities under the NHPA are addressed in the Commission's environmental rules⁶ which require applicants to evaluate, prior to construction, whether proposed facilities may affect historic properties that are listed or eligible for listing in the National Register of Historic Places ("National Register").⁷

4. The Collocation Agreement, negotiated in accordance with ACHP's rules and executed on March 16, 2001, tailors the Section 106 process to the context of collocations by excluding most collocations from routine review.⁸ In its Petition, Sprint seeks reconsideration of the Collocation Agreement, asserting that the construction of facilities (*i.e.* towers and antennas) for wireless communications, such as Sprint's wireless facilities, is not a federal undertaking subject to Section 106 of the NHPA.⁹ Sprint asserts that because the Commission does not issue licenses for individual wireless facilities under geographic area licenses, a carrier can site facilities throughout its licensed geographic area without prior Commission approval. Sprint also argues that the Commission's registering of a tower under Part 17 of the Commission's rules is merely a ministerial act and does not create a federal undertaking under the NHPA.¹⁰

5. Following the October 4, 2004 execution by the Commission, ACHP and NCSHPO of a Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process ("NPA"), the Commission amended Section 1.1307(a)(4) of the Commission's rules¹¹ to provide that applicants must comply with the ACHP rules,¹² as modified by the NPA and the Collocation Agreement.¹³ In doing so, the Commission considered the arguments of Sprint and others that the construction of a communications tower is not an undertaking for purposes of the NHPA where licensees receive "blanket" authorization to operate within a specified geographic area.¹⁴ The *NPA Report and Order* noted that the *Notice*¹⁵ seeking comment on whether to adopt the NPA did not seek comment on the public interest question of whether to revisit, under the public interest standard, the Commission's

⁵ See 36 C.F.R. § 800.14(b) ("The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings").

⁶ See 47 C.F.R. §§ 1.1301-1.1319.

⁷ See 47 C.F.R. §§ 1.1307(a)(4), 1.1312.

⁸ See 36 C.F.R. § 800.14(b).

⁹ See Sprint Petition at 1-3.

¹⁰ See Sprint Petition at 4.

¹¹ 47 C.F.R. § 1.1307(a)(4).

¹² See 36 C.F.R. Part 800, Subpart B.

¹³ *Nationwide Programmatic Agreement Regarding the Section 106 Historic Preservation Act Review Process*, WT Docket No. 03-128, *Report and Order*, FCC 04-222 (released October 5, 2004) (*NPA Report and Order*), 70 Fed. Reg. 55 (January 5, 2005). The rule change will become effective on March 7, 2005, 60 days after publication in the Federal Register.

¹⁴ *Id.* at ¶ 24.

¹⁵ See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, *Notice of Proposed Rulemaking*, 18 FCC Rcd. 11,664 (2003) (*Notice*); *Errata*, 18 FCC Rcd. 12,854 (2003); see also 68 Fed. Reg. 40,876 (July 9, 2003).

current treatment of tower construction as an undertaking. The Commission stated, however, that until such a reexamination, it remained confident that its treatment of tower construction and registration as subject to Section 106 reflects a permissible interpretation of the Commission's authority under Section 319(d) of the Act to issue construction permits for radio towers and its authority under Section 303(q) governing painting and/or illumination of towers for purposes of air navigation safety.¹⁶

6. Sprint's petition for reconsideration raises the same arguments that the Commission recently rejected when it amended Section 1.1307(a)(4) and codified the Collocation Agreement. Accordingly, for the reasons stated by the Commission, we do not revisit these arguments here.

III. CONCLUSION

7. In view of the foregoing, we deny Sprint's Petition for Reconsideration and Clarification.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration and Clarification filed by Sprint PCS, LLC IS DENIED.

9. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Federal Communications Commission

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Wireless Telecommunications Bureau

¹⁶ NPA Report and Order at ¶¶ 24-28.